

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE**

**DIVERSE MEDICAL
MANAGEMENT, INC.; AND AZZAM
MEDICAL SERVICES, LLC,**

Plaintiffs,

v.

**PLATINUM GROUP USA, INC.;
AMER RUSTOM; THE THIRD
FRIDAY TOTAL RETURN FUND, L.P.,
MICHAEL LEWITT, AMERICORE
HEALTH, LLC, GRANT WHITE,
JAMES B. BIDEN,**

Defendants.

**Case No: 19-CV-00046
JURY DEMAND**

**PLAINTIFFS' MOTION TO ENJOIN DEFENDANT
THE THIRD FRIDAY TOTAL RETURN FUND, L.P. FROM PROCEEDING
IN A LATER-FILED LAWSUIT IN THE SOUTHERN DISTRICT OF FLORIDA**

Plaintiffs Diverse Medical Management, Inc. ("DMM") and Azzam Medical Services, LLC ("AMS") hereby moves the Court to enjoin Defendant The Third Friday Total Return Fund, L.P. ("Third Friday Fund") from proceeding in its later-filed, parallel action currently pending in the United States District Court for the Southern District of Florida (the "Florida Lawsuit"). As demonstrated in the memorandum of law filed in support of this motion, this Court should enjoin Third Friday Fund's Florida Lawsuit pursuant to the first-to-file rule.

Pursuant to the first-to-file doctrine, when two similar actions are pending before two federal district courts, the court where suit was first filed should proceed while the second should be stayed, dismissed, or transferred. As the first-filed court, this Court has the authority to decide all of these issues. Further, the Court should follow the first-to-file doctrine because it would

promote judicial efficiency, avoid inconsistent rulings, and dispose of the entire dispute between the parties. The Florida Lawsuit, on the other hand, addresses but a small portion of the facts and claims in this action. Accordingly, Plaintiffs motion should be granted.

Respectfully submitted,

/s/ Robert A. Peal
Robert A. Peal
Mark W. Lenihan
SIMS|FUNK, PLC
3322 West End Avenue, Suite #200
Nashville, Tennessee 37203
(615) 292-9335
rpeal@simsfunk.com
mlenihan@simsfunk.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served on the following via the Court's CM/ECF system:

J Scott Hickman
Lee Webb Campbell , II
Sherrard Roe Voigt & Harbison, PLC
150 3rd Avenue South
Suite 1100
Nashville, TN 37201
615-742-4200
Fax: 615-742-4539
shickman@sherrardroe.com
wcampbell@srvhlaw.com

And on the following via Certified Mail and U.S. Mail:

Americore Health LLC
c/o Juan Ruiz
3048 SW 129 Terrace
Miramar, FL 33027

on this the 23rd day of August, 2019.

/s/ Robert A. Peal